

ORIGINAL

FILED

2011 AUG 16 P 12:51

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Tammy Hussin (Bar No. 155290)

2 *Of Counsel*

3 Lemberg & Associates LLC

4 6404 Merlin Dr.

5 Carlsbad, CA 92011

6 Telephone (855) 301-2100 ext. 5514

7 thussin@leberglaw.com

8 Lemberg & Associates, LLC

9 1100 Summer Street

10 Stamford, CT 06905

11 Telephone: (203) 653-2250

12 Facsimile: (203) 653-3424

13 Attorneys for Plaintiff, Susan Bautista

JCS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA **CV 11 4010**

16 Susan Bautista,

17 Plaintiff,

18 vs.

19 Hunt & Henriques; and DOES 1-10,
20 inclusive,

21 Defendants.

Case No.:

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

22
23
24 BY FAX

25
26
27
28
COMPLAINT FOR DAMAGES

1 For this Complaint, the Plaintiff, Susan Bautista, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
12 Defendants transact business here and a substantial portion of the acts giving rise to
13 this action occurred here.
14

15 **PARTIES**

16 4. The Plaintiff, Susan Bautista (hereafter "Plaintiff"), is an adult individual
17 residing at 1409 Saint Kitts Lane Foster City, California 94404, and is a "consumer"
18 as the term is defined by 15 U.S.C. § 1692a(3).
19

20 5. Defendant Hunt & Henriques ("Hunt"), is a business entity with an
21 address of 151 Bernal Road, Suite 8, San Jose, California 95119, operating as a
22 collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. §
23 1692a(6).
24
25
26
27
28

1 6. Does 1-10 (the "Collectors") are individual collectors employed by Hunt
2 and whose identities are currently unknown to the Plaintiff. One or more of the
3 Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. Hunt at all times acted by and through one or more of the Collectors.
7

8 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

9 A. **The Debt**

10
11 8. The Plaintiff allegedly incurred a financial obligation in the amount of
12 \$3,500.00 (the "Debt") to Citibank (the "Creditor").
13

14 9. The Debt arose from services provided by the Creditor which were
15 primarily for family, personal or household purposes and which meets the definition
16 of a "debt" under 15 U.S.C. § 1692a(5).
17

18 10. The Debt was purchased, assigned or transferred to Hunt for collection,
19 or Hunt was employed by the Creditor to collect the Debt.
20

21 11. The Defendants attempted to collect the Debt and, as such, engaged in
22 "communications" as defined in 15 U.S.C. § 1692a(2).
23

24 B. **Hunt Engages in Harassment and Abusive Tactics**

25
26 12. Within the last year, Hunt contacted Plaintiff in an attempt to collect the
27 Debt.
28

1 13. Hunt caused Plaintiff's telephone to ring at an excessive rate, placing
2 daily calls to Plaintiff's cell phone twelve (12) times per day.
3

4 14. Hunt called Plaintiff on her home telephone at as early as 6:30 A.M and
5 as late as 9:30 P.M. and 10:00 P.M.
6

7 15. Hunt failed to identify itself when speaking with Plaintiff and failed to
8 inform Plaintiff that the call was an attempt to collect the Debt.

9 16. During the initial contact and during every contact thereafter, Plaintiff
10 requested that Defendant cease all collection attempts to Plaintiff, and advised Hunt
11 that she has spine surgery and can't sleep and the calls were inconvenient and
12 harassing. She also advised Hunt that she cannot afford to pay the Debt.
13

14 17. Despite having been so informed during every telephone contact with
15 Plaintiff, Hunt continued to contact Plaintiff in an attempt to collect the Debt.
16

17 18. Hunt threatened to immediately garnish Plaintiff's wages and take her
18 home if she did not immediately pay the Debt.
19

20 19. Plaintiff sent a letter to Hunt requesting that Hunt cease all
21 communication attempts. Despite receipt of the letter, Hunt continued calls to
22 Plaintiff's home and cellular phone.
23

24 20. On different occasions, Hunt representatives identified themselves as a
25 customer service representative of Citibank, as calling from the Better Business
26 Bureau, and as calling from the District Attorney's office.
27
28

1 21. Hunt contacted Plaintiff's son in law in an attempt to collect the Debt.
2
3 Hunt informed the son in law of the existence of the Debt, and further informed him
4 that it could and would attempt to collect the Debt from the son in law.
5

6
7 **C. Plaintiff Suffered Actual Damages**

8 22. The Plaintiff has suffered and continues to suffer actual damages as a
9
10 result of the Defendants' unlawful conduct.

11 23. As a direct consequence of the Defendants' acts, practices and conduct,
12
13 the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety,
14 emotional distress, fear, frustration and embarrassment.

15 24. The Defendants' conduct was so outrageous in character, and so extreme
16
17 in degree, as to go beyond all possible bounds of decency, and to be regarded as
18 atrocious, and utterly intolerable in a civilized community.
19

20 **COUNT I**
21 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
22 **15 U.S.C. § 1692, et seq.**

23 25. The Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 26. The Defendants informed third parties of the nature of Plaintiff's debt
26 and stated that the Plaintiff owed a debt, in violation of 15 U.S.C. § 1692b(2).
27
28

1 27. The Defendants contacted the Plaintiff at a place and during a time
2 known to be inconvenient for the Plaintiff, in violation of 15 U.S.C. § 1692c(a)(1).
3

4 28. The Defendants communicated with individuals other than the Plaintiff,
5 the Plaintiff's attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).
6

7 29. The Defendants caused a phone to ring repeatedly and engaged the
8 Plaintiff in telephone conversations, with the intent to annoy and harass, in violation
9 of 15 U.S.C. § 1692d(5).
10

11 30. The Defendants placed calls to the Plaintiff without disclosing the
12 identity of the debt collection agency, in violation of 15 U.S.C. § 1692d(6).
13

14 31. The Defendants threatened the Plaintiff with garnishment if the debt was
15 not paid, in violation of 15 U.S.C. § 1692e(4).
16

17 32. The Defendants threatened the Plaintiff with attachment of his property if
18 the debt was not paid, in violation of 15 U.S.C. § 1692e(4).
19

20 33. The Defendants failed to inform the consumer that the communication
21 was an attempt to collect a debt, in violation of 15 U.S.C. § 1692e(11).
22

23 34. The Defendants used a name other than the true name of the debt
24 collection agency, in violation of 15 U.S.C. § 1692e(14).
25

26 35. The Defendants continued collection efforts even though the debt had not
27 been verified, in violation of 15 U.S.C. § 1692g(b).
28

1 36. The foregoing acts and omissions of the Defendants constitute numerous
2 and multiple violations of the FDCPA, including every one of the above-cited
3 provisions.
4

5 37. The Plaintiff is entitled to damages as a result of the Defendants'
6 violations.
7

8
9 **COUNT II**
10 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION**
11 **PRACTICES ACT, Cal. Civ. Code § 1788 et seq.**

12 38. The Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 39. The Rosenthal Fair Debt Collection Practices Act, California Civil Code
15 section 1788 et seq. ("Rosenthal Act") prohibits unfair and deceptive acts and
16 practices in the collection of consumer debts.

17 40. Hunt & Henriques, in the regular course of business, engages in debt
18 collection and is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

19 41. The Defendants threatened the Plaintiff with seizure of his property if the
20 debt was not paid, without intending to take such action, in violation of Cal. Civ. Code
21 § 1788.10(e).
22

23 42. The Defendants threatened the Plaintiff with garnishment or attachment
24 of his wages if the debt was not paid, without intending to institute such proceedings,
25 in violation of Cal. Civ. Code § 1788.10(e).
26
27
28

1 43. The Defendants did not disclose the identity of the debt collection agency
2 when communicating with the Plaintiff, in violation of Cal. Civ. Code § 1788.11(b).
3

4 44. The Defendants caused a telephone to ring repeatedly and engaged the
5 Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation
6 of Cal. Civ. Code § 1788.11(d).
7

8 45. The Defendants communicated with the Plaintiff with such frequency as
9 to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).
10

11 46. The Defendants failed to comply with the provisions of 15 U.S.C. §
12 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).
13

14 47. The Defendants communicated information about the debt to the
15 Plaintiff's extended family, without the intent of confirming the Plaintiff's location
16 and without consent from the Plaintiff or the Plaintiff's attorney, in violation of Cal.
17 Civ. Code § 1788.12(b).
18

19 48. The Defendants communicated with the Plaintiff in a name that was not
20 the name of the debt collector or debt collection agency, in violation of Cal. Civ. Code
21 § 1788.13(a).
22

23 49. The Defendants falsely represented that a legal proceeding had been or
24 was about to be instituted unless the debt was paid immediately, in violation of Cal.
25 Civ. Code § 1788.13(j).
26
27
28

1 50. The Defendants did not comply with the provisions of Title 15, Section
2 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.
3

4 51. The Plaintiff is entitled to damages as a result of the Defendants'
5 violations.
6

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Plaintiff prays that judgment be entered against the
10 Defendants:
11

12 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the
13 Defendants;
14

15 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)
16 against the Defendants;
17

18 C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.
19 § 1692k(a)(3) against the Defendants;
20

21 D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
22

23 E. Statutory damages of \$1,000.00 for knowingly and willfully committing
24 violations pursuant to Cal. Civ. Code § 1788.30(b);
25

26 F. Actual damages from the Defendants for the all damages including
27 emotional distress suffered as a result of the intentional, reckless, and/or
28 negligent FDCPA violations and intentional, reckless, and/or negligent

COMPLAINT FOR DAMAGES